

reason that I filed a minority report on language very similar to this, although this language is even broader than that in the other provision.

Under our present language which has been in the constitution for the last three Constitutions of the State of Maryland, there has developed in Maryland under the Act of 1965 a statute known as the Bail Reform Act which says that a person may be released on his own recognizance in cases where necessary, and the constitutional authority for enacting that statute was simply: "Excessive bail shall not be required."

Also, there is a full set of rules in the Court of Appeals which fixes the various provisions under which a person can be released. They do not attempt to say to any judicial officer because the release of a person awaiting a criminal trial is a matter of judicial discretion and under this simple provision excessive bail shall not be required under our statute. And, under our rules of the Court of Appeals we have all the provisions necessary and, therefore, I hope that we will not take too much time with this amendment and we will vote down this amendment.

THE PRESIDENT: Does any other delegate desire to speak?

Delegate Bothe.

DELEGATE BOTHE: Mr. President, I desire to rise briefly in support of the amendment which we debated at some length in the Committee of the Whole. I will not repeat those arguments, but I would like to point to one little news item that I acquired since the debate here in the Committee.

On December 22 of this year the Baltimore *Evening Sun* reported that there were one hundred and fifty-two prisoners under eighteen years of age who would spend Christmas Day and did spend Christmas Day in the Baltimore city jail of whom one hundred and seventeen were youthful violators awaiting trial.

The article goes on to say that most of the young prisoners awaiting trial had been there one, two, or three months. One sixteen year old had been there twenty-two months and another eight months.

Now, Judge Child can refer to the rules of the Court of Appeals; he can refer to the section that has been in our Constitution which says excessive bail shall not be required. He can point to all of those

things, but I will point to those young people who spent this last Christmas in the Baltimore city jail, and they spent it there for one reason only. That reason was that they did not have the money to pay a bail bondsman to bail them out. The evidence is clear that if these young people had been out, the odds of their failure to appear at trial would have been no greater than if they had the money.

We have had enough experimentation now to have it clearly proven that money bail is not the means to bring people to trial. It is instead the means to incarcerate them whether they are guilty or innocent and while they are still presumed to be innocent. This right is just as fundamental and more important than even the right to counsel because as a lawyer who has been frequently assigned to defend indigent people accused of crime, I can tell you that more often than not, whether the defendant is found guilty or innocent, the judge says he has been in jail how ever many months and, typically, it is three or more, and he releases him at the time of the trial.

We have many rights of the accused spelled out in the new constitution which are of much lesser importance. No man should be incarcerated unless he has been adjudged guilty of a crime and is serving a sentence. I suggest that this constitutional provision would end this nefarious practice in our State.

THE PRESIDENT: Delegate Henderson.

DELEGATE HENDERSON: I rose to discuss this provision when it was brought up before, and I simply want to remind you that this matter, in amplification of what Judge Child has said, is presently under consideration by the Legislative Council and jointly with the Rules Committee of the Court of Appeals. A sub-committee of the Rules Committee, I understand, is ready to report to the whole committee at a meeting which has been called for January 5 so that this whole problem, which I agree is a difficult one, is being dealt with in the best possible fashion, jointly by the legislature and the Rules Committee.

The problem is not quite as simple as it seems on its face because it is necessary to have some investigation of a person's background if he is charged with a serious crime before he can be allowed to run at large and somebody who is responsible should know whether he is likely to appear. That requires some investigation and